

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

HARVEY EDWARDS,)
)
)
Plaintiff,)
)
v.) Civil Action No.
)
VOX MEDIA, INC.,) **JURY TRIAL DEMANDED**
)
Defendant.)
)

COMPLAINT

Plaintiff Harvey Edwards alleges as follows:

1. This action arises because of the willful and unauthorized use of an artist's copyrighted work in Curbed, a real estate, architecture, and urban design website owned and operated by media giant Vox Media, Inc. ("Vox Media").

2. Plaintiff Harvey Edwards is an acclaimed photographer. Among other things, he is well known for his series of ballet images, including a copyrighted work entitled "Hands," which has been sold in poster form for about 40 years.

3. Because of the popularity and beauty of Edwards's iconic images, his posters, including "Hands," have been used as set decoration in a variety of contexts including more than two hundred films, television shows, book jackets, print ads, commercials, and interior design projects. Edwards is entitled to and receives compensation when his work is used by others.

4. Defendant Vox Media is a media company whose brand portfolio includes New York Magazine, Intelligencer, The Cut, Vulture, The Strategiest, Curbed, Grub Street, The Verge, Vox, SB Nation, Polygon, Eater, and Recode. Vox Media's website, Curbed, used Edwards's copyrighted work, "Hands," without permission.

5. Vox Media used, authorized, and approved the use of Edwards's copyrighted image in a photograph published online and currently available to the public in a manner that is willful, unfair, and deceptive, and has continued to do so even after Edwards notified Vox Media of the unauthorized use.

6. Edwards now brings this action to cause Vox Media to cease and desist from the unauthorized, unfair and deceptive use of his copyrighted image and to seek compensation for past unauthorized use.

PARTIES

7. Plaintiff Harvey Edwards is a photographer who works in Massachusetts and New Hampshire. He is the owner of the copyright for many images, including "Hands." Edwards has two published books, "The Art Of Dance," published by Little Brown and Company, which tells the photographic story of the hard work, pain, and sacrifice that a dancer goes through for those few moments of glory on stage, and "Fairfax," which documents the Jewish population of the Fairfax neighborhood of Los Angeles many of whom are Holocaust survivors. Edwards has also been featured in a segment on CBS Sunday Morning.

8. On information and belief, Defendant Vox Media is a media company incorporated in Delaware with a principle place of business at 1201 Connecticut Avenue NW, 11th Floor, Washington, D.C. Vox Media owns several print magazines and online brands including Curbed, The Verge, Vox, SB Nation, Eater, Polygon, and New York (magazine), and produces and distributes programming for television, streaming services, podcasts, and brand partners including Hulu, Netflix, Spotify, and CNN. Vox Media extends its services for customers throughout the United States and globally.

JURISDICTION AND VENUE

9. Vox Media has sufficient contacts with this jurisdiction to confer this Court with personal jurisdiction over them pursuant to the Massachusetts long-arm statute. Vox Media purposefully availed itself of the jurisdiction of this state and the exercise of such jurisdiction does not offend traditional notions of fair play and substantial justice.

10. This action asserts claims arising under the United States Copyright Act of 1976, as amended, 17 U.S.C. §§ 101 *et seq.* The Court has exclusive jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1338.

11. Venue is proper pursuant to 28 U.S.C. § 1391(b) because the infringing work is available to view throughout this District.

BACKGROUND

12. Edwards is the creator and holder of the registered copyright of many artistic images involving dance, including the poster “Hands,” pictured below:



13. “Hands” is a large offset lithograph that depicts a female ballet dancer in a stretched, arched position held in the hands of a male dancer. “Harvey Edwards, Long Beach Museum of Art Bookshop/Gallery” is printed on the upper right-hand side of the lithograph.

14. Edwards registered the copyright for “Hands” with the United States Copyright Office in January 1981.

15. Curbed generates and publishes online content related to urban architecture, design, and real estate. As part of its “House Calls” series, Curbed publishes weekly articles featuring interiors “with eye-catching style and big personality.” These articles spotlight several photographs of the featured space accompanied by descriptions of the design.

Curbed Used Edwards’ Copyrighted Work Without Authorization.

16. In July 2019, Curbed featured a property of Meg Gustafson located in the Bridgeport neighborhood of Chicago (“Bridgeport Cottage”) in its Curbed Chicago House Calls series. The article includes eleven photographs depicting different sections of the Bridgeport Cottage. Five of the photographs are smaller in size and are often depicted side-by-side on the screen in pairs. The remaining six photographs are larger and are formatted to encompass the full width of a viewer’s screen.

17. In a photograph of a Bridgeport Cottage bedroom (the “Bedroom Photograph”), Edwards’s “Hands” poster is seen clearly and recognizably. The Bedroom Photograph is one of the large format images, and “Hands” is positioned in the center of a viewer’s screen, as pictured below:



In Gustafson's bedroom, they ripped the floral wallpaper down to reveal a distressed wall. A neon light in the shape of a heartbeat monitor hangs above a semicircle headboard mural. A vintage ballet poster by Harvey Edwards hangs on the far wall.

18. Edwards's "Hands" is shown prominently in the Bedroom Photograph, in clear focus and under sufficient lighting, rendering the work readily recognizable. The viewer can read Harvey Edwards's name on the poster. Positioned in the center of the frame and surrounded by a bare wall, "Hands" serves as a focal point of the photograph for the viewer.

19. The caption accompanying the Bedroom Photograph provides no critique or commentary of "Hands," and it highlights Edwards's artistry: "A vintage ballet poster by Harvey Edwards hangs on the far wall."

20. The text surrounding the Bedroom Photograph is absent of any critique or commentary of Edwards's copyrighted work, stating only that the Bedroom Photograph depicts a "more restrained energy" and "embraces warm, desert-like vibes."

21. The use of Edwards's iconic image was an artistic design choice.

22. "Hands" is recognizable as an iconic dance image from the late 1970s and early 1980s. Its presence in the room immediately communicates a time period and aesthetic: the "ode to the '80s" that Curbed highlights throughout the article.

23. The use of "Hands" was deliberate and intentional. The image was deliberately placed in the position shown as set design for the purpose of creating a desired aesthetic effect.

Edwards's Copyrighted Work Was Deliberately Positioned in the Bedroom Photograph As Part of a Carefully Curated Set Designed for Photography and Filming.

24. In Curbed, Gustafson is described as having a roommate, Amber Mortensen.

25. Upon information and belief, Mortenson runs a location shooting agency based in Los Angeles and together, she and Gustafson market the Bridgeport Cottage as a carefully curated set that is designed for photoshoots and video filming. The location is currently available to be rented as a set through Peerspace, an online source for photography and filming locations, and Painfully Hip Locations, Mortensen's own agency that provide locations for photography and filming.

26. Peerspace describes the listing as "an 1885 workers cottage with themed rooms for all your film and photography needs!" and includes a link to Curbed's feature of the Bridgeport Cottage. It also contains information about lighting, sound, electrical, and other specifications that would be necessary for filming. As of the filing of this Complaint, the Peerspace listing for the Bridgeport Cottage had more than 140 reviews.

27. Painfully Hip Locations includes Curbed's Bedroom Photograph in its listing of the "4 bedroom home maximally decorated 1980's deco style," along with booking rates and other information for photo shoots and filming.

28. Curbed's article includes a link to Painfully Hip Locations' homepage and a post on Gustafson's Instagram presents a link to Curbed's feature of the Bridgeport Cottage alongside a link to the Painfully Hip Locations listing.

29. Gustafson's Instagram page also includes a post featuring the same "Hands" image in a bedroom of a different property purportedly owned by Gustafson. The photograph below (the "Bedroom Photograph 2") depicts "Hands" displayed in the different bedroom with a caption stating "#80sdecols is now available for your fashion photo and 80s flashback shooting needs!"



30. In addition, another website that competes with Curbed featured a piece about a different Gustafson property that displayed the "Hands" image in yet another set. The photograph below (the "Bedroom Photograph 3") depicts "Hands" displayed in what appears to

be the same bedroom as that of Bedroom Photograph 2. However, in this photograph, the room has been staged differently, including a new bedspread and rug.



31. The various rental listings as well as the prominent placement of “Hands” within different curated spaces, shows that Edwards’s copyrighted work was used deliberately and intentionally as set design in the Bedroom Photograph published by Curbed. It was not included merely incidentally or accidentally in the background.

32. Vox Media never asked for, and never received, permission to use or distribute Edwards’s copyrighted images for any purpose, and continues to feature the Bedroom Photograph on Curbed’s website and other online platforms, including Gustafson’s Instagram page. Licenses fees and/or royalties received by Edwards for the use of his copyrighted works in

films, television, advertisements, and other visual works are an important source of income for Edwards, whose career as an artist depends on receiving compensation for his artistic endeavors.

33. Shortly after learning about the unauthorized use of “Hands” on Curbed’s website, Edwards contacted Vox Media to inform it that his copyrighted images were being used without his permission.

34. Nonetheless, Vox Media continues to display “Hands” online and has not ceased its illegal conduct.

COUNT I
(Copyright Infringement – 17 U.S.C. §§ 101 *et seq.*)

35. Edwards repeats and realleges the allegations set forth above as if set forth fully herein.

36. By the actions alleged above, Vox Media has infringed and will continue to infringe a copyright owned and controlled by Edwards by copying, distributing, and publishing certain copyrighted material.

37. Vox Media has no license or any other form of permission to copy, duplicate, sell, distribute, or claim copyright ownership of “Hands,” or any portion or reproduction thereof.

38. Vox Media’s acts of infringement are willful pursuant to the Copyright Act, 17 U.S.C. § 504.

39. Vox Media’s acts of infringement are in degradation of and injurious to Edwards’s exclusive rights as the owner and/or administrator of the copyright.

40. Edwards has sustained and will continue to sustain damage to the value of the creative work subject to the registered copyright described above.

41. Edwards is entitled to an injunction restraining Vox Media, its agents and employees, and all persons acting in concert or participation with it, from engaging in any further acts in violation of the Copyright Act.

42. Edwards is further entitled to recover from Vox Media the damages, including attorneys' fees, and any gains, profits, and advantages obtained by Vox Media as a result of the acts of infringement as alleged above.

WHEREFORE, Plaintiff requests that this Court:

- A. Grant Plaintiff judgment on all Counts of the Complaint;
- B. Determine the amount of Plaintiff's damages, including statutory damages provided by the Copyright Act of 1976, 17 U.S.C. §§ 101 *et seq.*, and damages for his severe emotional distress enter judgment in such amount;
- C. Award Plaintiff his costs and reasonable attorneys' fees in this action;
- D. Permanently enjoin Defendant, its agents, servants, employees, attorneys, successors or assigns, and all persons, firms, and corporations acting in concert with it, from directly or indirectly infringing those copyrights owned or controlled by Edwards, including without limitation copying, distributing, and publishing, in full or in part, Edwards's copyrighted works and any expressions contained therein and/or recreating or restaging same; and
- E. Award such other relief as the Court deems just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Dated: October 29, 2021

Respectfully submitted,

/s/ Ian D. Roffman

Ian D. Roffman (BBO# 637564)
Mariel T. Smith (BBO #707742)
Nutter McClennen & Fish LLP
Seaport West
155 Seaport Boulevard
Boston, MA 02210
(617) 439-2000
iroffman@nutter.com
msmith@nutter.com

Attorneys for Plaintiff Harvey Edwards

5296210